

A.G. Contract No.: KR05-0089TRN  
ECS File No.: JPA 04-132  
Project No.: TEA NAU-0 (001) A  
Section: Franklin & Pine Knoll Drive  
Project: NAU San Francisco Sidewalks  
TRACS No.: SL547 01C  
Budget Source Item No.: Local

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE NORTHERN ARIZONA UNIVERSITY

**THIS AGREEMENT** is entered into this date March 7, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the BOARD OF REGENTS, acting for and on behalf of NORTHERN ARIZONA UNIVERSITY, (the "University").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The University is empowered by Arizona Revised Statutes § 15-1626 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the University.

3. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the University and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and Regulations.

4. The Project lies within the boundary of the University and has been selected by the University; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The University, in order to obtain Federal funds for the construction of the Project, is willing to provide University funds to match Federal funds in the ratio required or as finally fixed and determined by the University, State and FHWA, including actual construction engineering (CE) and administration costs.

6. The State and the University desire to participate in the design, construction and maintenance of an 8' – 10' sidewalk along San Francisco Street between Franklin Avenue and running south to Pine Knoll Drive, hereinafter referred to as the "Project". In addition to the sidewalk, benches, bike racks, and trash receptacles will be added to the Project, at an estimated cost of \$473,150.00. The parties agree that the University will design, construct and maintain the Project.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27401  
Filed with the Secretary of State  
Date Filed: 03/07/05

Janice K. Brewer  
Secretary of State

By: David J. Graenewald

**Construction and Design TRACS No.: SL547 01C / 01D**

Estimated Federal Aid Funds @ 94.3%	\$ 447,635.00
Estimated University Funds @ 5.7%	\$ 25,515.00
<b>*Total Estimated Cost of the Project</b>	<b>\$ 473,150.00</b>

\*(Includes construction, construction engineering administration and incidentals)

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**SCOPE OF WORK**

## 1. The State shall:

a. Agree to be the University's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal Funds available, it is understood and agreed that the University will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the University to self-administer the Project.

c. Upon execution of this Agreement, make payments to the University for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice.

d. Not be obligated to maintain the Project, should the University fail to budget or provide perpetual and proper maintenance as set forth in this Agreement.

## 2. The University shall:

a. With the aid and consent of the FHWA and the state using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the University up to 94.3% percent of the construction cost. Construction administration costs not participated by the FHWA shall be borne by the University.

c. Consent to any inspections performed by the State, provide records or audit any books of the University in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this Agreement. The University is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Provide maintenance to the sidewalk, benches, bike racks and trash receptacles during and after the construction phase, all at the University's expense.

f. Upon completion of the Project, provide for it its own cost and as an annual item in its budget, perpetual and proper maintenance to the sidewalk, benches, bike racks and trash receptacles.

## **II. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance, provided by the University shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the University cancels this Agreement, the State shall in no way be obligated to maintain said Project.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the University, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, University agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for maintenance of sidewalk, benches, bike racks and trash receptacles shall be perpetual, unless assumed by another governmental agency.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the University will bear all costs associated therewith.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

Northern Arizona University  
Attn: Richard Baron  
P.O. Box 5637  
Flagstaff, AZ 86011  
(928) 523-6437

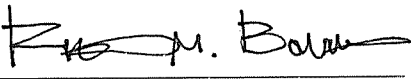
11. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**ARIZONA BOARD OF REGENTS**

For and on behalf of  
Northern Arizona University

By   
\_\_\_\_\_  
RICH BOWEN  
ASSISTANT VICE PRESIDENT

**STATE OF ARIZONA**

Department of Transportation

By   
\_\_\_\_\_  
SUSAN TELLEZ  
Contract Administrator

APPROVAL OF NORTHERN ARIZONA UNIVERSITY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the NORTHERN ARIZONA UNIVERSITY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the UNIVERSITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 22<sup>nd</sup> day of February, 2005.

A handwritten signature in black ink, appearing to read "M. Brown", is written over a horizontal line.

University Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0089TRN (JPA 04-132), an Agreement between public agencies, i.e., The State of Arizona and The Northern Arizona University, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 1, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis  
Assistant Attorney General  
Transportation Section